IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 521 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALABHAI CHHELABHAI BHARWAD - Applicant(s)
Versus
STATE OF GUARAT & 10 - Respondent(s)

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Appearance :
MR HM PARIKH for Applicant(s) : 1,
MS MEETA PANCHAL APP for Respondent(s) : 1,
MR LR PATHAN for Respondent(s) : 2 - 11.

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 03/09/2007

ORAL JUDGMENT :

1. The petitioner has filed this Criminal Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of

acquittal rendered by learned J.M.F.C., Petlad on 30-4-2001 in Criminal Case No. 955 of 2000 acquitting respondents No. 2 to 7 for the offences punishable u/ss 147, 148, 149, 352, 337, 435 and 504 of the I.P. Code.

2. On the basis of complaint file by Lalabhai Chhelabhai Bharwad before Mahelav Police Station offence was registered as I - CR No. 12 of 2000 and investigation was started. On completion of investigation charge sheet was laid before the court concerned. Thereafter, learned J.M.F.C., Petlad framed charge at Exh. 4 against the accused for the aforesaid offences. The charge was read over and explained to the accused who denied having committed the offence and claimed to be tried. Therefore, the prosecution examined the witnesses. The summons were issued to the complainant and the witnesses but were returned unserved with a certificate of Talati-cum-Mantri of Gram Panchayat that Bharwads are not residing in the village. Therefore, learned J.M.F.C., Petlad closed evidence of the prosecution observing that despite giving sufficient opportunities the prosecution has not ascertained exact address of the witnesses and not adduced evidence against the accused and acquitted respondents No. 2 to 7 for the offences charged against them. Therefore, original complainant has preferred this Criminal Revision

application.

3. I have heard learned advocate Mr.H.M. Parikh for the petitioner and leaned advocate Mr. L.R. Pathan for respondents No.2 to 7 and learned A.P.P. Ms. Meeta Panchal for respondent No.1 = State at length and in great detail.

4. It appears from the impugned judgment that summons were issued to the complainant and the witnesses and they were directed to appear in the court for recording of evidence. Pursuant to the summons Umeshkumar Chimanlal Dave Exh. 16, Chandubhai Chhababhai Exh. 18 and Malabhai Somabhai Thakor were examined by the prosecution. However, these witnesses did not support the prosecution case. Thereafter, the trial Court on relying upon certificate Exh. 21 given by Talati-cum-Mantri of Morad Gram Panchayat stating that no Bharwads are residing at village Morad, closed evidence observing that despite giving sufficient opportunities to the prosecution, the prosecution failed to examine the witnesses. Thereafter, the learned Magistrate acquitted the respondents No. 2 to 7 for the offences charged against them.

5. It appears from the record and proceedings of the case that summons in the name of witness

Lalabhai Jivanbhai Bharwad was issued directing him to appear in the court on 17-2-2000.

6. Learned advocate Mr. Parikh for petitioner has drawn my attention to the fact that summons was issued to the complainant but it was issued in the wrong name.

7. On perusal of F.I.R. it appears that complainant was Lalabhai Chhelabhai Bharwad and not Lalabhai Jivanbhai Bharwad as indicated in the witness summons. Therefore, it cannot be said that summons was issued to the complainant. In view of this, it becomes clear that summons was not issued to the petitioner - original complainant and therefore he was not given sufficient opportunity to appear before the Court to give evidence. Therefore, in my view, learned Magistrate committed in error in exercising jurisdiction vested in him by closing the evidence.

8. In view of above, this revision application is required to be allowed and case is required to be sent back to the court concerned to record oral evidence of complainant Lalabhai Chhelabhai Bharwad and other witnesses if any, who have not been summoned so far to record their evidence.

9. Accordingly, this revision application is allowed and the case is remanded to the court of J.M.F.C., Petlad with a direction to record evidence of complainant Lalabhai Chhelabhai Bharwad and other witnesses not summoned so far and to proceed further in accordance with law. Rule is made absolute to the aforesaid extent.

10. The office is directed to transmit back the record and proceedings of the case to the trial court immediately.

(Bankim N. Mehta, J.)

/JVSatwara/